

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 5 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JAHAGIRKHAN BARAMKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 5 of 2002
MR MM TIRMIZI for Petitioner No. 1
MR BD DESAI A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/01/2002

ORAL JUDGEMENT

1. The petitioner named above has preferred this Revision Application challenging the judgment and conviction orders recorded against him. The Revision Application is filed under Section 397 read with Section

2. The learned Judicial Magistrate, First Class, Khedbrahma conducted criminal case No.64/93 against the present petitioner and convicted him for the offence punishable under Section 279, 304-A, 337 I.P.C. The petitioner was sentenced to suffer R.I. for three months for offence punishable under Section 279. He was directed to pay fine of Rs.300/- for the said offence. For the offence punishable under Section 337 I.P.C. the petitioner was sentenced to suffer R.I. for two months and he was required to pay fine of Rs.150/-. For the offence punishable under Section 304-A I.P.C. the petitioner was sentenced to suffer R.I. for two years and he was required to pay fine of Rs.500/-. Feeling aggrieved by the said judgment and conviction order dated 19.12.1998, the petitioner herein preferred Criminal Appeal No.2/99 before the Sessions Court, Sakarkantha at Himatnagar. The learned Additional Sessions Judge who heard the said appeal dismissed the same by judgment and order dated 31.12.2001. Feeling aggrieved by the said judgment and orders of two Courts below the petitioner preferred this Criminal Revision Application before this Court. At the commencement of the argument, the learned advocate for the petitioner had submitted that a report from the Probationary Officer may be called for. The said report was called for and I have perused the same.

3. At this stage, the learned advocate for the petitioner does not press the Revision Application on merit and request that the present petitioner be extended benefit of Probation under Section 4 of the Probation of offenders Act, 1958. I have heard Mr.B.D. Desai, learned A.P.P. for the State. He states that appropriate orders may be passed. On going through the report of the Chief Officer, appointed under the Probation of Offenders Act, it is revealed that the petitioner is a young man having wife and three children. It is noticed from the said report that his character and conduct are good and satisfactory. It is further revealed that he has actually felt guilty for the offence committed by him. Some details about the fact of accident in question have also been given by him in the said report. Ultimately, it has been recommended that this is a fit case wherein the benefit of Probation may be extended to the petitioner under Section 4 (1) of the said Act. It is further recommended that the petitioner may be kept under the supervision of the Probation Officer under Section 4 (3) of the said Act. Some statements of surrounding witnesses appear to have been recorded in support of the said report by the said

officer.

4. The said report shall be kept in a sealed cover on the record. In support of the said prayer, the learned advocate for the petitioner has relied upon certain decisions. One of them can be gathered from Criminal Revision Application 208/82 which was disposed of by this Court on 31.8.1982. The said matter related to the offence punishable under Sections 279, 337, 338, 304-A of the I.P.C. The learned Judicial Magistrate, First Class, Upleta had convicted the accused for the aforesaid offence and he was required to suffer jail punishment for the said offence. There also the prayer was made for extending benefit under Section 4 (1) of the said Act. This Court accepted the said prayer of extending the benefit of Probation to the accused of the said case. Another case relied upon by the learned advocate for the petitioner also relates to the offence punishable under Sections 304, 337, 338 I.P.C. and there also the benefit of Probation was extended to the accused.

5. Having regard to the facts and circumstances of the case and also to the report submitted by the Probation officer and looking to the age and antecedent and the family background of the petitioner, I am of the view that even in this case the aforesaid benefit can be extended in light of the observations made by this Court in Criminal Revision Application No.208/82 decided on 31.8.82 and in Criminal Revision Application No.372/94 decided by this Court on 28.2.1995.

6. Under the aforesaid facts and circumstances of the case, the Revision Application is partly allowed. The conviction and sentence of the petitioner for the offence in question i.e. offence punishable under Sections 304-A, 279, and 337 I.P.C. is ordered to be confirmed and the judgment and conviction orders of the two Courts below are ordered to be confirmed. However instead of sentencing the petitioner immediately to the jail, it is directed that the petitioner herein shall be released on probation under Section 4 (1) of the Probation of Offenders Act, 1958 on his furnishing solvent surety and P.R. in a sum of Rs.5,000/- (Rs.Five thousand only) to the satisfaction of the Trial Court on his undertaking to appear and receive the sentence as and when called for during the period of two years from the date of execution of the bail bond. The petitioner is further directed to maintain peace and shall show good conduct and behaviour during the aforesaid period. It is further directed that the petitioner shall remain under

the supervision of the Probation Officer, S.K. at Himatnagar for the aforesaid period under Section 4 (3) of the said Act of 1958. A copy of this order shall be forwarded to the said officer for due compliance. The said officer shall periodically submit the report to the learned Judicial Magistrate, First Class in accordance with law. Rule is made absolute to that extent. D.S. is permitted.

(D.P. Buch, J.)

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